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The Honorable Bruce Cohen, Chairman,
And Members
Child Support Guidelines
Review Committee
1501 West Jefferson
Phoenix, AZ

Re: Hearing today, and status of development of guidelines

Dear Judge Cohen and Members of the CSGRC:

As you know, I became aware in late February, of the public service you have been performing, to review and propose revisions to the child support guidelines, and have been attending meetings and hearings since. It is certainly clear that a lot of effort and thought has been devoted to this task. It has taken some time for my own learning process, to become aware of the complexities and implications of the proposed guidelines. This awareness became even more clear at your meeting of June 4th, and the meeting of the Arizona Judicial Council on June 24th.

At both of these recent meetings, several members of the public joined me to express concerns about the text and numerical changes in the proposal. At the meeting of the AJC on June 24th, the proposal was tentatively approved, subject to Judge Davis' motion that before a final recommendation by the AJC to the Arizona Supreme Court, which has the authority to set new guidelines, it would be helpful for a more thorough review of outcomes of the new model (Child Outcome Based – COBS) versus the current Income Shares model – updated.

It was my understanding that the review would be comprehensive. The AJC specifically requested that this review be prepared in a timely manner, so that it could be examined prior to its next meeting.

I have been watching the Court web site, and was surprised in late August, to see that a hearing of this Committee was set for today, and a meeting for next Friday, without data being posted to the web site. Upon making inquiry, I was informed that this would occur shortly. Then two items appeared on the AJC part of the web site.

The first is entitled, "Impact of COBS on Existing Support Orders". It states that it is only specifically analyzing only 416 cases. The table noted below only applies to parenting pairs with one child and a non-primary parent having 100 days of parenting time. However, the report is somewhat ambiguous, giving the impression that families of multiple compositions have been reviewed. Also, unlike item two, it purports to consider final outcomes after allocation of a hypothetical child care cost attribution – or with no child care cost allocation – so this aggregate data does not provide detailed individual comparisons of current, versus updated, versus proposed outcomes with no added cost allocations – only aggregate percentages are offered.

The other item is a "Child Support Methods Comparison Chart" –dated July 20, 2010, but posted only on September 1, 2010 – and as to only 31 potential support outcome scenarios for a parenting pair with one child and a non-primary parent having 100 days of parenting time.

It certainly appeared that this was totality of the review requested by the AJC. This review appeared to be somewhat of a rehashing of data presented earlier, with a few corrections of outcome calculations (without explanation why such corrections were needed). Looking for a word to describe my reaction, I have settled upon "flummoxed" – including pretty much all of its meanings – confused, perplexed, at a loss, and bamboozled. This review does not appear to address the concerns of the public in a reasonable manner. Its inadequacies are quite compelling.

I don't really know if this limited review is the intention of the Committee, or if the Committee has just been very poorly served by the data prepared and presented.

You may be aware that I am in the process of developing an e-newsletter, AZLAWFORUM, for persons involved in the legal community. Preliminary

notices to interested persons commented that the data was grossly inadequate. I was just about to finalize my newsletter, when I became aware that the new draft COBS Calculator had been posted online – just yesterday. I inquired if there was any intention to post a further data analysis and was told that there would be further data forthcoming. It has not yet been seen.

Perhaps further data has not yet been forthcoming, due to the complexities of developing the online COBS Calculator – or due to a summer hiatus by persons preparing the data – or for other good and sufficient reasons. However, I submit that the lack of presentation of a comprehensive review of the data reasonably in advance of today's meeting is troublesome. Certainly, although this one public hearing is supposed to give the public the opportunity for further comment, members of the public will be severely limited in their ability to comment meaningfully, due to the timing which has occurred.

The apparent intention of the CSGRC to finalize its recommendation next Friday, with an unknown ETA for further data, gives the unfortunate impression of an unnecessary push to finalize the proposal without a full review. Mr. Byers expressly stated at the last meeting of the AJC that there is no requirement that guidelines be finalized to be effective as of January 1, 2011. The AJC has only extended the authority of the CSGRC until October 31, 2010, and apparently plans to meet to consider the final adoption of the proposal on October 21, 2010, which can certainly give the impression that this horse is at the finish line, and no competitor or revision is going to win the race. However, there have been quite a few extensions of the Committee's authority, and for good cause, the AJC would, I would hope, grant a further extension.

Please review the following concerns about the inadequacy of the review to date.

This review fails to provide case by case data as to a wide sample of family compositions. The only detailed case data which has been presented deals with 31 examples of a one-child family, with a non-primary parent having 100 days of parenting time.

The sample size is artificially limited to a case file sample from 2007, originally selected by the CPR – of only 568 cases. The sample size was further limited to case files where a change would occur, which resulted in a sample size of 416 cases.

It is also noteworthy that this review used complex tax projections which may have no relation to the actual withholding patterns that both payees and payors will experience – in other words, it fails to provide real-world analysis of cash flow. I have run some sample projections on the scenarios given, and found disparities in the net income outcomes which would actually occur, month-to-month. I used Circular E from the Treasury Department, to look at monthly federal tax withholding results - which do not differ whether or not one is a head of household. I then used a mere 20% of federal taxes for a State tax estimate – however at higher incomes, a higher percentage is likely. Social Security taxes of 6.2% were applied – up to the salary cap – however of course that cap comes into play at only at the end of the year. Medicare taxes of 1.45% were applied to all income. It is suggested that any further review not look at end of year tax return results, but actual tax withholding expectations.

No presentation has been made in this review, as to the concern repeatedly stated by members of the public, about the likely outcome of the COBS model, to equalize the standard of living in both payor and payee households, without regard to prior marital status or the industriousness of the respective parents. I had certainly anticipated charts on not only a broader sample size, but also of the net available income in payor and payee households after taxes and base child support. This becomes particularly necessary for a fair review of outcomes in multi-child families.

Comparisons in the Chart do not include add-ons for each parent's fair share of child care and premium costs. This does allow apples and apples comparisons. However, an anomaly in the guidelines appears to suggest an oddity in the COBS model, as stated in the Impact report. Discretion is given to the Judge to disregard child care costs if it is believed that the base child support is sufficient. This is very odd, considering that child care costs, especially for young children and especially for multi-child families, can often be over a thousand dollars – while medical premiums are rarely that high, and are always considered an add-on to be shared by the parents. Why would the developers of COBS not know if child care costs were included in development of the base tables, or not? This is quite a different standard than found in prior guidelines, where the Court would make a qualitative analysis, of whether or not the requested child care costs were work-related, not whether the payee had enough money without such contributions.

As I prepared for my own review, of just a few sample scenarios given – using the figures presented online, it became clear that many cases, pursuant to the

COBS philosophy, will result in a quite substantial decrease in support ordered. While the proposal provides for some very limited phase-in of increases in support, there is no provision for phase in of decreases in support – there is no mention of it, not even a discretionary authority for the Judge to apply. I submit that this merits consideration.

It is also interesting to note, that there is a standard for comparison, of what the mean middle income standard of living would be, for a family of four – when only a family of a total of three, one and two-thirds in the payee household, and perhaps one and one-third in the payor household, should be examined. Without a computation, I am not able to project what an analysis of each party's outcome would be after taxes and support, in comparison to the mean middle income applicable to a true family size. However, I suggest further analysis in this manner might be of interest. It is possible that such an analysis would show that both the payee and payor households would have a higher percentage of the median standard of living for the extrapolated family size. However, if there is a sound basis for the COBS philosophy, for a good look at projected living standard outcomes, then should it not be so reviewed?

Concerns have been expressed to the Committee, as to consideration of multiple family compositions, not just among the parenting pair at issue, which might have more than one child and various parenting time plans, but also in situations where one or both parents may have other children to support. The proposed guidelines do have some additional language to address such situations. However, I am really not sure that this language is adequate to see that children in the related families have similar outcomes. Typically, adjustments for other children merely change the gross income of a party, which does little to change the support outcome. It would have been helpful if the review had addressed such situations.

Conclusions

Please consider requiring a further detailed review of outcomes, specifically with various numbers of children, various parenting time plans, tax estimates based on true withholding, various compositions of payor and payee households in terms of other children, and computations of net income availability for each parenting pair.

Please do so before a final report to the AJC – and with the opportunity for public review of this data – with a rescheduling of the 9/17 meeting if need be. This

could still occur in time to allow presentation of a final proposal to the AJC on October 21st.

Please consider a discretionary phase-in provision as to decreases.

Please examine the reason the COBS basis is so uncertain as to whether or not child care costs have been taken into account.

Please consider if the Judge should have greater phase-in discretion – for either increases or decreases.

Please qualitatively evaluate the fairness of the net income outcomes after a larger set of data, to see if they meet the statutory standards of fairness, and of encouraging compliance with orders.

Thank you very much for your consideration.

Very sincerely,

A handwritten signature in black ink, appearing to read 'R. Selden', written over the typed name.

Rena Selden
Attorney at Law